

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD J. ZALAC,

Plaintiff,

v.

CTX MORTGAGE CORPORATION, a
Delaware Corporation; THE FEDERAL
NATIONAL MORTGAGE ASSOCIATION, a
United States Government Sponsored
Enterprise; JPMORGAN CHASE, a National
Association, d/b/a CHASE HOME FINANCE,
LLC., NORTHWEST TRUSTEE SERVICES,
INC., a Washington Corporation,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Delaware Corporation, and DOE
DEFENDANTS 1-10, Defendants,

Defendants.

No. 2:12-cv-01474

CTX MORTGAGE CORPORATION'S
OBJECTION TO PLAINTIFF'S
PROPOSED ORDER OF DISMISSAL
WITHOUT PREJUDICE

Defendant CTX Mortgage Company, LLC ("CTX") respectfully submits this objection to the proposed Order On Motion To Dismiss, which Plaintiff filed October 15, 2012 without any authority or explanation. (Docket 13.)

Plaintiff's proposed order is apparently in response to the motion to dismiss CTX previously filed on September 20, 2012 (Docket No. 9). CTX's motion included a request that dismissal be with prejudice and without leave to amend. Plaintiff did not oppose or otherwise

CTX MORTGAGE CORPORATION'S OBJECTION TO
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PREJUDICE - 1

Case No. 2:12-cv-01474

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1 respond to the motion by the noting date. Plaintiff's proposed order, which provides for
2 dismissal without prejudice, should be rejected for at least three reasons.

3 *First*, the proposed order was not submitted timely. Instead, Plaintiff submitted the
4 proposed order after CTX filed its reply memorandum and after the noting date had passed.
5 Plaintiff has not provided good cause for why he should be excused from complying with the
6 deadlines under LR 7(d)(3). For this reason alone, the Court should reject Plaintiff's order.
7 *Second*, Plaintiff has failed to offer any authority or argument for why dismissal should be
8 without prejudice. On the contrary, Plaintiff neither disputes the conclusion he failed to state a
9 viable claim against CTX, nor does he seek leave to amend the complaint against CTX.
10 Plaintiff's failure to provide any authority or analysis should be deemed an admission that CTX's
11 motion seeking a dismissal with prejudice has merit. *See* LR 7(b)(2). Finally, as explained in
12 CTX's motion, there are no facts alleged or that could have been alleged against CTX to support
13 any of the three causes of action in Plaintiff's complaint. Granting leave to amend would be
14 futile because Plaintiff cannot possibly cure the deficiencies in his complaint. The Court should,
15 therefore, dismiss Plaintiff's claims with prejudice and without leave to amend.

16 Dated this 17th day of October, 2012.

17 FOSTER PEPPER PLLC

18
19 /s/ Neil A. Dial

20 Tim J. Filer, WSBA #16285

21 Neil A. Dial, WSBA #29599

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Counsel for Defendant

CTX Mortgage Company, LLC

CERTIFICATE OF SERVICE

I, Neil A. Dial, state that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty one years, I am not a party to this action, and I am competent to be a witness herein. I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System who will send notification of such filing to the following parties who have appeared in this action as of today's date:

Richard Llewelyn Jones - rlj@richardjoneslaw.com
William Rasmussen - billrasmussen@dwt.com
Matt Sullivan - matthewsullivan@dwt.com
Heidi E. Buck - hbuck@rcolegal.com

I DECLARE under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of October, 2012 at Seattle, Washington.

/s/ Neil A. Dial

Tim J. Filer, WSBA No. 16285

Neil A. Dial, WSBA #29599

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